

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550

74-1550

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

CARMINE TRAMUNTI, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. D - Pages 1 to 17

HERBERT SIEGAL
Attorney for Defendant-Appellant
Carmine Tramunti
17 John Street
New York, New York 10038
RE 2-5330

NANCY ROSNER
Attorney for Defendant-Appellant
Louis Inglese
401 Broadway
New York, New York 10013
925-8844

PAGINATION AS IN ORIGINAL COPY

IVAN S. FISHER
Attorney for Defendant-Appellant
Donato Christiano
401 Broadway
New York, New York 10013
925-5937

ROBERT L. ELLIS
Attorney for Defendant-Appellant
Angelo Mamone
17 East 63rd Street
New York, New York 10021
838-2323

FRANK A. LOPEZ
Attorney for Defendant-Appellant
Joseph DiNapoli
31 Smith Street
Brooklyn, New York 11201
237-9500

THEODORE ROSENBERG
Attorney for Defendant-Appellant
Frank Pugliese
31 Smith Street
Brooklyn, New York 11201
858-0589

KENNETH E. WARNER
Attorney for Defendant-Appellant
Joseph Ceriale
875 Avenue of the Americas
New York, New York 10001
244-4444

ROBERT FISKE
Attorney for Defendant-Appellant
John Gamba
One Chase Manhattan Plaza
New York, New York 10005
422-3400

GEORGE DAVID ROSENBAUM
Attorney for Defendant-Appellant
Vincent D'Amico
51 Chambers Street
New York, New York 10007
BE 3-8120

MICHAEL C. DOWD
Attorney for Defendant-Appellant
Frank Russo
120-10 Queens Boulevard
Kew Gardens, New York 11415
793-2300

ROBERT LEIGHTON
Attorney for Defendant-Appellant
Warren C. Robinson
15 Park Row
New York, New York 10038
267-6016

GARY SUNDEN
Attorney for Defendant-Appellant
William Alonzo
401 Broadway
New York, New York 10013
925-4848

EDWARD PANZER
Attorney for Defendant-Appellant
Hattie Ware
299 Broadway
New York, New York 10007
349-6128

MARTIN JAY SIEGAL
Attorney for Defendant-Appellant
John Springer
250 West 57th Street
New York, New York 10019
586-1414

HARRY POLLAK
Attorney for Defendant-Appellant
Henry Salley
299 Broadway
New York, New York 10007
BE 3-0386

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

v. :

CARMINE TRAMUNTI, et al. : 73 Cr. 1099

(Re: JOSEPH DiNAPOLI) :

Defendants. :

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Before:

HON. KEVIN THOMAS DUFFY, District Judge

New York, May 7, 1974

Room 35 - 10:30 a.m.

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the
Southern District of New York

FRANK A. LOPEZ, Esq.,
Attorney for Defendant Joseph DiNapoli

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1
2 THE COURT: United States of America versus
3 Carmine Tramunti.

4 This is the sentence of Joseph DiNapoli.

5 Is the government ready?

6 MR. CURRAN: Government is ready, your Honor.

7 THE COURT: Is the defense ready?

8 MR. LOPEZ: The defendant is ready, your Honor.

9 THE COURT: Mr. Curran, do you have a statement
10 to make?

11 MR. CURRAN: Yes, your Honor.

12 This defendant has been convicted on Counts 1
13 and 21 of the indictment. Count 1 is the conspiracy count;
14 Count 21 involves a substantive charge dealing with approx-
15 imately a kilogram of heroin.

16 He faces on each of those counts a maximum sentence
17 of 15 years in jail, a \$25,000 fine and a three-year
18 special parole term.

19 This defendant, your Honor, is an associate of
20 defendant Tramunti and a partner of narcotics trafficker
21 Vincent Papa. His criminal record is set forth in the pre-
22 sentence report.

23 At trial, your Honor will recall, the defense
24 offered that there was loan sharking in explanation of the
25 \$967,000 in cash which this defendant possessed back in

2 February of 1972.

3 The defendant has denied through agents, at least,
4 ownership of this money, and he filed a claim for its
5 return after publicly claiming that he had found the money
6 and attempted to suggest that a portion of it had been stolen
7 by the officers involved.

8 Your Honor, the proof in this case established
9 that this defendant was a commercial narcotics trafficker
10 who dealt in multi kilo quantities of heroin and was the
11 source of supply for, among others, the defendant Frank
12 Pugliese.

13 The defendant would appear to be a professional
14 criminal with close ties to organized crime. He has been
15 found guilty of conspiracy to deal in heroin and, as I said,
16 of a substantive count as well.

17 This defendant, your Honor, according to the
18 evidence before the Court and before the jury, has been
19 a high level violator whose operations in commercial
20 narcotics trafficking have contributed to the death and the
21 physical and spiritual destruction which the traffic in
22 heroin has brought to New York City and countless thousands
23 of its people.

24 The government urges that the Court's sentence of
25 defendant Joseph DiNapoli reflect both his record and the

enormity of these dradful crimes.

THE COURT:Mr. Lopez.

MR. LOPEZ: Yes, your Honor.

Your Honor, I think that of all the proceedings that we follow through in the court, the proceeding of sentence, of course, is the one that gives judges and defense counsel and prosecutors the greatest difficulty.

We often pride ourselves in saying that while the interest of society must also be protected, yet sentence is persoal to each defendant that comes before the Court, and I think that your Honor, in his sentencing procedures, as they have applied to each of the defendants, the care and consideration that has been given, it has been reflected in the sentencing that your Honor has given and imposed upon each defendant, and on that occasion, with regard to defendant Pugliese, where your Honor has delayed the sentence because he wanted to be perfectly fair as far as that defendant was concerned.

So we have before you, your Honor, Joseph DiNapoli. We have a man before you that is going on forty years of age, who soon will be thirty-nine.

He was born here in New York. He graduated from high school, Benjamin Franklin. He served six years in the National Guard, with an honorable discharge, your Honor, and,

2 of course, as we look into his background we find that he
3 had an excellent employment record with the New York Post
4 for over ten years; that he began business with the Di Napoli
5 brothers, his other brother, and worked for Tri-Arts Printing
6 and had an interest in Chateau Printing, your Honor, so that
7 we have a long history of a man who is willing to work and
8 has worked in the past.

9 THE COURT: is it Chateau or Tri-Arts?

10 MR. LOPEZ: Well, Tri-Arts and also Chateau
11 Printing. here were two printing concerns, your
12 Honor. As far as his family life, your Honor, there is
13 something that should be explained to the Court.

14 We know from the probation report that the
15 defendant is legally married at the present time, although
16 he has been separated from his wife for some period of time.

17 Out of that marriage there were four children.
18 The defendant has always supported in a correct life style
19 his wife, his legal wife, your Honor, and also those four
20 children.

21 As a matter of fact, his legal wife speaks
22 glowingly of the defendant and the care he has taken of
23 their four children.

24 Unfortunately, your Honor, that marriage ended in
25 a very unhappy separation; not that the parties fought each

other, but they fully understood that the love and affection was not there, and therefore, the defendant, without shirking his responsibilities, continued the support of his legal wife.

The defendant Di Napoli met Jean Patalano, who, as your Honor knows, testified before the court, and I believe that your Honor has read a letter that I personally brought to chambers yesterday morning around 9:15, giving incidents of their personal life.

It was Joseph Di Napoli's intention to file for a legal divorce as far as his legal wife is concerned but for the reasons explained and which are personal, I won't go into that, but, in any event --

THE COURT: I understand.

MR. LOPEZ: What I am trying to point out, your Honor, hopefully, is that as far as his family, as far as his children, Di Napoli himself is a human being and as a person has never shirked his responsibilities financial and otherwise in the dedication that he not only has to five children, but also three other children which he considers his own and cares for them.

As a matter of fact, your Honor has received also reports from the schools regarding the deleterious effects that have occurred with regard to many of these children,

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2 your Honor, because of an absence of a father at home.

3 I have visited their home in New Rochelle,
4 your Honor, so that I could convey to the Court what my
5 feelings are. It is a well cared for home, your Honor.
6 Unfortunately, because of the circumstances in which the
7 defendant DiNapoli finds himself that home has now been
8 put on the market and must be sold because expenses cannot
9 be maintained there.

2 10 The DiNapoli family is a closely-knit family.
11 I think your Honor knows that. And the brothers of
12 Joseph DiNapoli have taken on the financial burdens not only
13 of their own families but of both families, for which
14 Joseph DiNapoli, their brother, feels responsible for.

15 Your Honor, this defendant does not have a long
16 criminal history. As a matter of fact, what is remarkable
17 as far as Joseph DiNapoli is concerned is that he has only
18 a brief intrusion with the law. Your Honor is well aware
19 of the fact that on January 4, 1973, Judge MacMahon of this
20 court sentenced the defendant on a one felony conviction
21 and one misdemeanor conviction.

22 I believe that the probation report is incorrect
23 as far as that is concerned, since I think they mentioned
24 two felony convictions, which is incorrect.

25 And your Honor also knows that on January 4, 1973,

Joseph DiNapoli received a three-year sentence.

I have spoken with various authorities at the Federal Detention Headquarters. They kept DiNapoli here and they speak of him in glowing terms. Not only Warden Gengler has indicated that to me, but the probation report reflects that on their own verification, his conduct there has been that of a model prisoner. His conduct has been exemplary.

So, therefore, your Honor, I wish to point out the type of person that DiNapoli is toward his family, towards his superiors, towards authority. He has neither been arrogant -- as a matter of fact, he is a very trusted prisoner and had it not been for this case, I am certain that Warden Gengler would have given him permission to go out on leave and on weekends.

Warden Gengler and Washington, D.C., the Bureau of Prisons in Washington, D.C., have taken upon themselves to write letters of commendation with regard to the work that the defendant DiNapoli has performed at the Federal Detention Headquarters.

So, therefore, we look at his record, which he owned up to as far as shylocking is concerned.

Only in passing, your Honor, I know that the Probation Department, since the defendant has been incar-

cerated since January 4, 1973, added the old probation report and then updated it somewhat. Unfortunately, your Honor, with all these probation reports we have a paragraph there in the probation department report which I would like to comment on, where a fellow commits a bank robbery or a robbery of Household Finance Corporation, and he said that he was so involved with shylocking and payments that he had to commit this bank robbery and sort of inferred that it was DiNapoli's fault that he borrowed money and then had to make the payments, your Honor.

This is the type of unfortunate circumstances that we have to see.

Now, very curiously, Mr. Curran has pointed out that Mr. DiNapoli is a known associate of Carmine Tramunti. He has also been known to organized crime, et cetera. Yet, when your Honor conducted the motion to suppress hearing, it became quite evident from Pallatroni, from the previous probation report, from the information that we received during the course of the trial, that no such criminal associations were known, even to Pallatroni, to Reed, to Spurdis and to those people.

As a matter of fact, Joseph DiNapoli was an unknown quantity to them.

In the old probation report -- and the defendant

2 has been incarcerated since then -- nothing is mentioned,
3 as a matter of fact, of any O.C. or organized criminal
4 activities, and I think we should take that into consider-
5 ation.

6 I certainly do not intend to go behind the verdict.
7 I am bound by the verdict.

8 But Mr. Curran again has undertaken to mention the
9 fact of the \$1 million and the association of DiNapoli to
10 Tramunti.

11 I would like to point out that there hasn't been
12 a single work in this record that at any time DiNapoli
13 ever said hello to Tramunti or that DiNapoli was in any way
14 connected directly with Tramunti.

15 As a matter of fact, your Honor, the proof in
16 this case hinged on the testimony of Harry Pannirello who
17 alone indicated that he had heard from someone else, and also
18 submitted the evidence to the trial jury, and I am not going
19 behind the verdict, that he never dealt in narcotics. It
20 was always what someone else said.

21 We have the question of the million dollars,
22 which seems to plague us. It plagues us before the
23 Office of the Special Prosecutor of the State of New York,
24 Mr. Nadjari, who claims that is part of another conspiracy.
25 It plagues us twice in this court and, very curiously,

your Honor, the million dollars in the Tramunti case was never mentioned as an overt act.

I can assure your Honor that that million dollars came as an afterthought, after the filing of the indictment, and now we have the same million dollars in overt act No. 8 in still another case, and I daresay that they will use the million dollars in every single narcotic case until the statute of limitations expires on it.

So it is something that we are faced with.

We have never been able to associate the million dollars with specific narcotics, and yet we are playing continually with this type of proof.

Your Honor, the government has said that the defendant was a partner and an associate of Angelo Mamone and, of course, your Honor, in sentencing, your Honor must take into consideration all factors.

The proof that the government submitted during the course of trial was that he was an associate of Angelo Mamone. In fact, your Honor, therefore I feel, your Honor, that if anything, Angelo Mamone's sentence should be considered with that of Joseph DiNapoli's, with this one proviso: There is no history of narcotic involvement as far as DiNapoli is concerned. There was a history of narcotic involvement as far as Angelo Mamone was concerned.

2 As a matter of fact, if my memory serves me correctly,
3 there was two convictions as far a that is concerned.

4 I am alo pointing out something else as far as
5 this is concerned. This is not the type of crime, your
6 Honor, where Joseph DiNapoli, having been convicted for one
7 crime, is let out on the street, your Honor, and then goes
8 and becomes a recidivist again. He is not a recidivist by any
9 means and therefore, your Honor, I am going to ask you that
10 you consider all the letters that we have submitted to your
11 Honor, as I am sure you will, that you take into consideration
12 the fact that this is indeed a very serious crime, and it is
13 a commercial crime, that you take into consideration what
14 the record itself at the trial and that the motion to suppress
15 indicated towards sentencing, that your Honor consider
16 Joseph DiNapoli as a person and, in mitigation, and in
17 equity, your Honor consider the facts of what his respon-
18 sibility towards his own family have been.

19 This is the whole picture of the man, your Honor,
20 and I hope that in sentencing, your Honor, your Honor will
21 consider the sentence and the fact that he is still doing
22 time on the previous conviction of January 4, 1973, in
23 this court.

24 Judge Duffy, thank you most kindly for your
25 consideration.

MR. CURRAN: Your Honor --

THE COURT: Do you want to reply?

MR. CURRAN: Very briefly, your Honor.

THE COURT: Yes.

MR. CURRAN: Your Honor, the government appreciates Mr. Lopez' analysis of our thoughts in connection with this indictment and our future plans as he expresses them, but I want to at least convey the notion to the Court that he is not speaking for the government in that connection, and without going into any details by way of rebuttal, I don't admit the points he tried to make in that connection.

The point I was making, your Honor, at this sentencing with respect to the so-called million dollars, the \$967,000 was that we have already heard before the verdict in this case two explanations offered by the defendant for that money, one involving a claim that he found it, and a suggest that some of it had been taken by police officers or federal agents; a claim that it was really loan sharking proceeds.

So I submit that could be considered by the Court in terms of the jury's verdict, a unanimous verdict, that it was indeed narcotics-related.

MR. LOPEZ: Your Honor, if I may just reply,

2 I am sorry, I don't want to belabor this point -- it may
3 not even be important. But around page 3000 or 3500 there
4 is a statement by me to your Honor, I think, right on the
5 record, which says, your Honor, I have no doubts that right
6 at this moment this same million dollars is being presented
7 to the grand jury on still another indictment, and while
8 I don't speak for the government, nor for Mr. Curran, my
9 predictability has been rather good. It seems that history
10 is on my side.

11 Your Honor, as far as making any allegations as
12 against any federal officers, as far as taking the money,
13 no such allegations were ever made and, as a matter of fact -

14 THE COURT: Mr. Lopez, I couldn't care less.

15 MR. LOPEZ: Okay. Fine, your Honor. Then I will
16 stop.

17 THE COURT: Mr. DiNapoli, do you have anything to say
18 before I pass sentence?

19 DEFENDANT DINAPOLI: No, sir.

20 THE COURT: Mr. Lopez, is there any reason that you
21 know of why I should not impose sentence at this point?

22 MR. LOPEZ: There is not, your Honor.

23 THE COURT: Joseph DiNapoli, you stand convicted
24 of a repulsive crime, commercial narcotic trafficking,
25 and yet you exhibit all the tendencies of a Jekyll and Hyde.

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2 You have a decent family, indeed two of them, both of decent,
3 and apparently you have cared and cared well for them.

4 You care for the children.

5 Up until a few years ago you had a creditable
6 work record. You had a trade, a craft from which you could
7 earn a decent living. Yet you have already been convicted
8 of shylocking, and even if you stayed with just that form
9 of illegal activity, I suspect that you could have made
10 a luxurious living.

11 It seems to me that greed dominated you. Talking
12 about the million dollars that you were transporting
13 through the Bronx, I am quite sure that that was not going
14 to be used to buy jelly beans. I think you know that the
15 government filed a special dangerous drug offender
16 information against you, and if I had upheld that, you could
17 have been sentenced to 25 years on each count for which you
18 were convicted.

19 I dismissed that information on basically
20 technical grounds, but I am convinced, after hearing all
21 the record, that you were deeply involved in this narcotics
22 conspiracy and that your involvement was motivated solely
23 and simply by greed, and perhaps by an excessive desire
24 for self-gratification.

25 I am convinced that you were at the core of the

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2 conspiracy, both actually and in terms of unrepentent
3 malice.

4 It is the judgment of this Court that you shall
5 be remanded to the custody of the Attorney General on
6 Count 1 for a period of 15 years, on Count 21 for a period
7 of five years; such terms to be served consecutively,
8 but such terms to be served concurrently with the sentence
9 which you are now serving.

10 After the completion of the term of imprisonment,
11 the law requires that you shall serve a special parole
12 term of three years.

13 Now, Mr. DiNapoli, I want you to recognize that
14 you have a right to appeal from your judgment of conviction
15 and the sentence. I want you to recognize that if you pre-
16 sently have no funds to take care of such appeal, that
17 appeal may be prosecuted in forma pauperis.

18 I am sure that Mr. Lopez will get whatever papers
19 are necessary if you deem that to be necessary.

20 Mr. Lopez?

21 MR. LOPEZ: Yes, your Honor. I thank your
22 Honor for the concurrent part of the sentence which will
23 run -- this sentence will run concurrently with the
24 instant sentence that he has now.

25 Your Honor, I had one more application. It is

an academic application, but I am moving for bail at the present time, nominal bail, not in the hope, your Honor, that the defendant is going to make bail since he is still under service of sentence imposed by Judge MacMahon. The purpose for my application is quite candidly that he can remain at Federal Detention Headquarters where he is well liked and therefore he doesn't have to be redesignated and, secondly, your Honor, in view of the fact that I am hopeful of carrying out the appeal in his behalf and intend to file a notice of appeal, I would hope that he would be available to me at the Federal Detention Headquarters.

If bail is set and he is able to make bail then, of course, he would remain here at Federal Detention Headquarters. He is certainly not a burden to Warden Gengler, quite the contrary; he looks very favorably upon this prisoner, and I move him for bail at the present time.

THE COURT: No, I can see no purpose to be served by setting a bail amount at this point.

MR. LOPEZ: Thank you, your Honor.

THE COURT: All right, marshal.

MR. LOPEZ: Your Honor, can Mr. DiNapoli just see his wife?

THE COURT: It's up to the marshals. Go ahead, let him see her.